



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 21, 2022

IN THE MATTER OF:

Appeal Board No. 624843

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$712.50 on the basis that the claimant made a willful misrepresentation to obtain benefits. The claimant requested a hearing.

The Administrative Law Judge held a hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed May 2, 2022 (A.L.J. Case No.), the Administrative Law Judge granted the claimant's application to reopen 121-11835 and sustained the initial determination as modified to reduce the claimant's right to receive future benefits by four effective days and charge no civil penalty.

The Appeal Board, on its motion pursuant to Labor Law § 620 (3), has reopened and reconsidered the Judge's decision insofar as the Judge sustained the initial determination as modified.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant, who is developmentally disabled, worked full time for an agency for more than a year as a direct support professional serving developmentally disabled children. In April 2021, the claimant became ill. On April 26, he asked his supervisor for time off due to his illness. The supervisor told him

that he had to work or else give two weeks' notice of his resignation. Since the claimant was too sick to work, he felt obligated to resign. Using a model he found online, the claimant composed and submitted a letter of resignation that day, effective May 10, 2021.

The claimant reopened an existing unemployment claim and answered a question asking the reason he was no longer working. He was offered the choices "School Employee," "Lack of work," "Quit," "Discharged/Let Go," "Fired," and "Strike/Lockout." The claimant did not feel he had quit, as he had not wanted to leave his job. He certified that he separated from employment due to "Lack of work" because this choice was the one that made the most sense to him.

OPINION: The credible evidence establishes that the claimant certified that he separated from employment due to "Lack of work." He chose this reason instead of "Quit" because he did not choose to quit. Rather, he submitted his resignation letter because his supervisor directed him to do so. We find that the claimant's choice of "Lack of work" was reasonable under the circumstances. Therefore, his certification was not knowingly false. Accordingly, we conclude that the claimant's certification to "Lack of work" does not constitute a willful misrepresentation, and the claimant is not subject to a forfeiture penalty or civil monetary penalty.

DECISION: The decision of the Administrative Law Judge, insofar as reopened, is modified as follows and, as so modified, is affirmed.

The initial determination, reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$712.50 on the basis that the claimant made a willful misrepresentation to obtain benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER